

Application No. 09/893,359
Amendment Dated: July 31, 2007
Response to Office Action of January 31, 2007
Attorney Docket No.: B051

Remarks/Arguments:

Claims 1-26 are pending in the application. Claims 1 and 5 are in independent form. Claims 27-44 are cancelled as directed to a non-elected invention. Claim 1 is amended to correct an obvious typographical error and the amendment is not narrowing.

Claim Rejections under 35 U.S.C. § 103

Claims 1-3 and 14 are being rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,772,585 to Lavin et al. ("Lavin").

Claim 1 includes "automatically determining a proposed plan of action consistent with the diagnosis" and then "accepting the plan of action" or "altering or adding to the one or more elements in order to make them acceptable for the care of a specific patient."

The Examiner states that Lavin teaches "automatically determining a proposed plan of action consistent with the diagnosis," citing step 234 of FIG. 17, and col. 13, lines 45-49. Applicants submit that the Levin does not teach "automatically determining a proposed plan of action consistent with the diagnosis" and then accepting or altering the proposed plan. In Levin, the physician selects procedures from a general list that is not specific to the diagnosis to manually create a plan.

In col. 13, lines 45-49, Lavin states that: "After selecting the disease, the physician has the option of . . . continuing on to select the treatments or procedure from the custom procedure list 234 on the diagnosis screen 226 (at step 246). Alternatively, the physician can use a CPT 95 list, which is a database available from the American Medical Association. The database utilizes industry-accepted codes for various procedures (at step 248). The physician then selects the procedure viewed from the lists and adds the procedure to the procedure table list 230 (at steps 250-252)."

These lines indicate that the physician manually chooses procedures from a list and then adds the selected procedures to the table, but they do not indicate "automatically determining a proposed plan of action consistent with the diagnosis." Laving states that the list could be a

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CPT95 list, which lists procedures for all diagnoses, or a custom procedure list. While Lavin does not explicitly define "custom procedure list," there is no indication the list is automatically generated to be consistent with the diagnosis. It would appear to be a list of procedures that is more convenient for the physician than the entire CPT 95 list. For example, it may be limited to procedures that are commonly used by the physician in his area of practice.

Lavin use the term "custom list" can be better understood from his use of the term in connection with the previous step of selecting a diagnosis. FIG. 18 shows that the physician can select a diagnosis from a "custom disease list" or from the ICD9 VI list. There is no indication that the diagnoses on the "custom disease list" are automatically generated from symptoms, just as there is no indication that the custom list of procedures are automatically generated by the diagnosis. With regard to the diagnosis list, Lavin states that: "The physician may then either use the custom diagnosis display to scroll through and select the appropriate disease or other diagnosis or . . ." While Lavin does not repeat this detail about scrolling and selecting again when talking about the custom procedure list, it would appear that the same method is used. If the procedure list were automatically generated, it seems that the list would be generated in procedure display table 230, rather than in a list from which the physician can select procedure to put into display table 230.

Applicants submit that claims 2-4 are patentable for reasons described above with respect to parent claim 1.

Specifically with regard to claim 2, the Examiner states that he considers selecting the customized treatment or procedure list to be automatically initiated after selecting disease or diagnosis. Webster's New World College Dictionary, 3rd ed., defines "initiate" as "to bring into practice or use; introduce by first doing or using; start [to initiate a new course of study]." Page 695 (1997). Applicants submit that merely selecting the procedure is not "automatically initiating" the procedure. Applicants understand that the Examiner construes claim terms giving them their broadest reasonable interpretation in light of the specification and claims as understood by a skilled person. Claim 1 includes accepting a plan. To construe accepting a plan in claim 1 as equivalent to "automatically initiating" an element of the plan in claim 2 is to ignore that there are two separate claim limitation, and is therefore inconsistent with the

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specification and claims.

The specification on page 21 states that initiation can be manual or automatic, and provides examples of "automatic initiation," including automatically sending a prescription to a pharmacy to be filled or transmitting orders for tests to a laboratory. Applicants submit that when the claim term "automatically initiating one or more of the action plan elements" is construed using the broadest reasonable interpretation in light of the specification, it is not taught by Lavin.

With regard to claim 3, the Examiner states that by teaching selecting a diagnosis from a list, Lavin teaches:

- entering a colloquial diagnosis into the electronic system;
- determining from the colloquial diagnosis a formal diagnosis; and
- associating the formal diagnosis with said colloquial diagnosis for further use.

The claim elements include a "colloquial diagnosis" and a "format diagnosis." There is no teaching in Lavin of using two different diagnoses; the physician merely selects a diagnosis from a list. There is no teaching that a colloquial diagnosis is entered into a system, and then a formal diagnosis is determined from the colloquial diagnosis.

With regard to claim 14, the Examiner states that the limitation is met by the physician entering examination data via voice input. Applicant submits that entering data via voice input is not the same as downloading the transcribed verbally input data to a handheld computing device.

Claims 4-13 and 15-23 are being rejected under 35 U.S.C. § 103(a) as being unpatentable over Lavin in view of U.S. Patent 6,208,973 to Boyer et al. ("Boyer")

Claim 5 includes "automatically displaying care plan elements consistent with the diagnosis" and "automatically initiating at least one aspect of the selected care plan elements." As described above with respect to claim 1, these limitations are not taught by Lavin. Applicants submit that claims 6-26 are patentable for the same reasons as parent claim 5.

With regard to claim 4, the Examiner states that one of ordinary skill in the art would have found it obvious to include automatically suggesting which treatment are covered by the patient's insurance policy. While applicants do not concede that suggesting alternate treatments would have been obvious, that is not the claim limitation. Claim 4 states "automatically

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suggesting one or more alternative diagnoses for which the care plan element is authorized." As described on page 19 of the specification, there may be two similar diagnoses that could account for a patient's symptoms, but the patient's insurance may authorize a desired test only if one or the other of the two similar diagnoses are used. Claim 4 includes "suggesting one or more alternative diagnoses for which the care plan element is authorized." This differs from suggesting an alternate procedure for the same diagnosis.

With regard to claim 6, the passages cited by the Examiner teach analyzing patient data. "In particular, the information previously gathered and stored in the database can be analyzed or compiled to track the effectiveness of treatments or medications on particular illnesses and the reasons therefor. Furthermore, patterns of diseases or symptoms may be tracked within a given geographical area or group of patients. The user can also identify trends in patient load and schedule in order to maximize the efficiency and effective use of the physician's time." Col. 15, lines 50-58. There is no indication that the data is used to alter the order in which care plan elements are displayed to the clinician as claimed in claim 6.

With regard to claim 7, the Examiner says the limitation is met because there are databases that allow the data to be analyzed. Applicants submit that the existence of databases that can be analyzed does not teach the claim element of adaptively modifying the order in which care plan options are presented to the clinician.

With regard to claim 10, applicants submit that claim 10 is patentable for the same reasons described above with respect to claim 4.

With regard to claims 15, 16, and 17, the Examiner states that Lavin teaches this limitation because multiple clinical personnel can access the common database information. Claim 15, however, states that the system "supports one or more applications programming interfaces for communicating with other health-care related programs." For example, the specification on page 31 shows that the system can be integrated into expert systems or other medical software. The cited passage of Lavin teaches multiple users accessing the system; not the system accessing other systems.

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Claims 18, 19 and 20 are patentable for reasons described above with respect to claim 2.

Claims 24-26 are being rejected under 35 U.S.C. § 103(a) as being unpatentable over Lavin in view of Boyer et al., and further in view of U.S. Patent No. 6,687,676 to Denny ("Denny").

Applicants submit that claims 24-26 are patentable for reasons described above with respect to parent claim 5.

Applicants submit that all claims are now allowable and respectfully requests reconsideration and allowance of the application.

Respectfully submitted,

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